BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RACHELLE REDFAIRN	)	
Claimant	)	
	)	
VS.	)	
	)	
BLACK & VEATCH	)	
Respondent	)	Docket No. **251,553**
	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent requests review of a preliminary Order entered by Administrative Law Judge Robert H. Foerschler dated December 28, 2000.

ISSUE

The only issue on review is whether the Administrative Law Judge erred in finding the claimant's injury arose out of and in the course of her employment.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant was employed for the respondent as a software analyst II. Although she was based in Kansas City, her job required that she travel approximately 70 percent of the time. On the date of the injury, the claimant had been assigned for three weeks to a project in Burtonsville, Maryland. The claimant stayed in a hotel not far from the job site.

At the conclusion of her first week of work at the project site, the claimant had checked out of the hotel where she had been staying in Burtonsville, Maryland. The claimant had received prior approval from her project manager to travel to Ocean City,

Maryland for the weekend. At the end of the work day, at approximately 5 p.m., the claimant left the project site and was driving to Ocean City, Maryland for the weekend when she was involved in an automobile accident.

It is undisputed that while she was on travel status for the respondent, the claimant received a daily per diem, reimbursement for her lodging, car rental and fuel for the car. These reimbursements included the weekend travel to Ocean City, Maryland. The lodging expenses for the weekend were reimbursed as long as such costs were the same or less than the cost respondent paid for the claimant's lodging near the job site during the work week.

It is equally undisputed that the claimant had received prior approval to spend her weekend in Ocean City, Maryland. Although the claimant testified that she intended to do some work on the project over the weekend, the trip was a pleasure excursion and she just wanted to spend her weekend by the ocean. She was going to enjoy the ocean and the scenery.

It should also be noted that the claimant was on call in the event that there were problems at the project site. However, she was free to do whatever she chose over the weekend and was not required to be back at the job site in Burtonsville, Maryland until Monday morning.

The respondent argues that the injury did not arise out of and in the course of employment and was non-compensable under the plain language of the going and coming rule codified in K.S.A. 44-508(f). The respondent further contends that this case is similar to a frolic and detour case wherein an employee starts out on the employer's business but when they detour for a personal errand, the injury occurring during their personal errand does not arise out of and in the course of employment. It is the respondent's contention that claimant was within the course of her employment during the working hours on September 17, 1998, but that once she left the project site she was on a personal trip unrelated to her work.

The claimant contends that this case is more appropriately categorized within the exceptions to the going and coming rule where travel is an inherent part of the employee's job duties. The claimant notes that a benefit was conferred upon the respondent because the claimant stayed in the general vicinity of the job site during her extended stay. Lastly, the claimant notes several factors as indicia that the claimant was covered by the act at the time of the accident. Those factors include: (1) the fact that the respondent paid the claimant a per diem for each day including her weekend; (2) the respondent paid for the rental car including weekend usage; (3) the respondent paid for the fuel for the car including her weekend usage; (4) the respondent paid for her lodging at Ocean City, Maryland; (5) the claimant took work with her and intended to do some work during the weekend; and, (6) the claimant was on call during the weekend if problems arose at the project site.

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment. K.S.A. 1999 Supp. 44-501(a). Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case. *Kindel v. Ferco Rental, Inc*., 258 Kan. 272, 899 P.2d 1058 (1995).

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. Id. at 278.

> The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.

Id. at 278; *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984); *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

The claimant was clearly on work-related business travel status while engaged in work at the job site in Burtonsville, Maryland. Because the claimant chose to spend her weekend by the ocean, this case is analagous to a situation where the claimant has deviated from business travel status.

In determining whether claimant's accidental injury arose out of and in the course of her employment, the Board must consider whether the deviation by claimant was sufficient to find that claimant had abandoned the employer's business for personal reasons, thus causing a denial of benefits to be proper. In Larson's *Workers' Compensation Law*, the majority rule is that an identifiable deviation from a business trip for personal reasons takes the employee out of the course of employment until the employee returns to the route of the business trip, unless the deviation is so small as to be disregarded as insubstantial. § 17.01 (1999). A common variation of this rule is the side trip, which occurs somewhere along the course of the main journey, when the main journey is intended as a business journey and a side-trip is of a personal nature. Larson's, § 17.03[3] (1999), describes the majority rule as until the side-trip is completed, the deviation for personal reasons would cause a denial of benefits. Larson's, § 17.03[6] (1999).

Kansas has long recognized the principle that where the business errand is finished or abandoned and the worker sets about the pursuit of his own pleasure or indulgence, the employer is not liable for compensation. *Woodring v. United Sash & Door Co.*, 152 Kan. 413, 103 P.2d 837, (1940).

Here, the business week had concluded and the claimant was admittedly going away from the job site to spend the weekend by the ocean. When she left the job site and proceeded to her lodgings next to the ocean, it cannot be said she was conducting any business for her employer. The respondent had not directed that the claimant go to Ocean City, Maryland for the weekend and derived no benefit over what it would have received had claimant stayed at her hotel near the job site. The claimant was on a clearly personal side trip and injuries sustained during this deviation from her business trip are not compensable. When considering the entire record, the Board finds that claimant's September 17, 1999, accident occurred during a personal trip and that it did not arise out of and in the course of her employment with the respondent.

The Board is not unmindful of the factors listed by the claimant as indicia that the respondent considered the claimant on travel status and covered by the Act. Although those factors are significant to a determination of whether travel is an inherent part of the employee's job duties, they are not controlling where, as here, the employee has deviated from the business purpose of her travels.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the preliminary order of Administrative Law Judge Robert H. Foerschler dated December 28, 2000, should be, and is hereby, reversed and set aside.

IT IS SO ORDERED.

Dated this _____ day of April 2001.

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BOARD MEMBER

Copies to:

John H. Thompson, Attorney for Claimant
Bart E. Eisfelder, Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Workers Compensation Director